



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1993

Mr. David M. Feldman
Ms. Myra C. Schexnayder
Feldman & Rosenberg, L.L.P.
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR93-378

Dear Mr. Feldman and Ms. Schexnayder:

On behalf of the Fort Bend Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19463.¹

The school district has received two requests for information concerning the site for a proposed middle school. The school district states that the first request seeks: "(1) 'copies of the correspondence . . . related to the process which culminated in the selection of the 1464 site for the proposed middle school;' and, (2) 'a copy of the report made to the [school district] by the Superintendent-appointed committee which made the final recommendation pertaining to site selection.'" The second request seeks "[a] copy of the report/letter of recommendation from the ['Blue Ribbon' Site Selection Committee that recommended the site for middle school #9]."² The school district claims the information is excepted from public disclosure under sections 3(a)(4), 3(a)(5), and 3(a)(11) of the Open Records Act.

¹Although the request for an open records decision submitted to this office by Mr. Feldman dated April 29, 1993 was assigned ID# 20069, the information in question is the same as that in the request submitted by Ms. Schexnayder dated March 19, 1993. We will address both requests under ID# 19463.

²We note that the second request includes a total of five items. However, Mr. Feldman states in his letter of April 29, 1993 that "all of the documents requested . . . have been made available to [the requestor]," except the information stated above.

Section 3(a)(5) excepts

information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and *information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.* [Emphasis added.]

Section 3(a)(5) is designed to protect a governmental body's negotiating and planning position with respect to a specific transaction. Open Records Decision No. 357 (1982). Once the property has been acquired by the governmental body, section 3(a)(5) no longer applies. Open Records Decision No. 222 (1979). Where a governmental body has made a good faith determination that release of "information pertaining to appraisals or purchase price of real or personal property" would damage its negotiating position with respect to the acquisition of property, this office will accept that determination unless the documents or other information indicate to the contrary as a matter of law. *See generally* Open Records Decision No. 564 (1990).

The school district contends that "the purchase of the proposed school site is far from 'final.'" Although an earnest money contract has been signed for a particular site, the school district argues that "the purchasing process cannot be considered complete until such time as all of the necessary studies have been favorably completed and the seller has submitted a final plat." Ms. Schexnayder has informed us by telephone that the parties did not close as anticipated on May 13, 1993 and that there is no anticipated closing date at this time. The school district states that the proposed purchase is still conditional and that planning and negotiating continue due to a number of factors associated with the purchase of the public school site. Based on the foregoing, we conclude that the school district has made a good faith determination that release of the requested information would be damaging to the school district's negotiating position. Accordingly, you may withhold the requested information under section 3(a)(5) of the Open Records Act. Since we resolve your request under section 3(a)(5), we do not address your section 3(a)(4) and section 3(a)(11) claims.

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Ms. Myra C. Schexnayder

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/LBC/jmn

Ref.: ID# 19463
ID# 19472
ID# 20069
ID# 20114

Enclosures: submitted documents

cc: Mr. Kevin Michael Lynch
6422 Box Bluff Court
Sugar Land, Texas 77479
(w/o enclosures)